IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	David E. MCDYSAN *et al.*	Confirmation No.:	7586
Filed:	November 28, 2000	Group Art Unit:	2155
Customer No.:	25537	Examiner:	Bates, K.
Attorney Docket:	RIC00042		

For: PROGRAMMABLE ACCESS DEVICE FOR A DISTRIBUTED NETWORK ACCESS SYSTEM

REPLY BRIEF

Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed December 19, 2008.

I. STATUS OF THE CLAIMS

Claims 1-14, 16-38, and 40-50 are pending and are on appeal. Claims 15 and 39 are canceled. No claim is allowed.

Claims 1, 2, 4, 7, 16, 22-27, 29, 32, 40, and 46-49 remain rejected under 35 U.S.C § 102(e) as anticipated by *Albert et al.* (US 6,606,316).

Claims 19-21 and 43-45 remain rejected under 35 U.S.C. §103 as obvious based on *Albert et al.* (US 6,606,316).

Claims 11 and 36 remain rejected under 35 U.S.C. § 103 based on *Albert et al.* (US 6,606,316) in view of *Natarajan et al.* (US 6,505,244).

Claims 3 and 28 remain rejected under 35 U.S.C. § 103 based on *Albert et al.* (US 6,606,316) in view of *Amara et al.* (US 6,674,743).

Claims 5-10, 12-14, 17, 18, 30, 31, 33-35, 37, 38, 41, and 42 remain rejected under 35 U.S.C. § 103 based on *Albert et al.* (US 6,606,316) in view of *Gai et al.* (US 6,167,445).

Claim 50 remains rejected under 35 U.S.C. § 103 based on *Albert et al.* (US 6,606,316) and *Gai et al.* (US 6,167,445) in view of *Amara et al.* (US 6,674,743).

II. GROUNDS OF REJECTION TO BE REVIEWED

Whether claims 1, 2, 4, 7, 16, 22-27, 29, 32, 40, and 46-49 are anticipated under 35 U.S.C § 102(e) by *Albert et al.* (US 6,606,316)?

Whether claims 19-21 and 43-45 are obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316)?

Whether claims 11 and 36 are obvious under 35 U.S.C. § 103 based on *Albert et al.* (US 6,606,316) in view of *Natarajan et al.* (US 6,505,244)?

Whether claims 3 and 28 are obvious under 35 U.S.C. § 103 based on *Albert et al.* (US 6,606,316) in view of *Amara et al.* (US 6,674,743)?

Whether claims 5-10, 12-14, 17, 18, 30, 31, 33-35, 37, 38, 41, and 42 are obvious under 35 U.S.C. § 103 based on *Albert et al.* (US 6,606,316) in view of *Gai et al.* (US 6,167,445)?

Whether claim 50 is obvious under 35 U.S.C. § 103 based on *Albert et al.* (US 6,606,316) and *Gai et al.* (US 6,167,445) in view of *Amara et al.* (US 6,674,743)?

III. ARGUMENT

Appellants maintain and incorporate the positions presented in the Appeal Brief filed November 21, 2008, but present further refutation of certain assertions presented in the Examiner's Answer.

At page 14 of the Answer, the Examiner takes issue with Appellants' argument that *Albert et al.* does not teach the claimed "second network interface" because there is no network disclosed between the forwarding agent 231 and the service managers 241, 242, or the servers 220. The Examiner maintains that there is a second network in *Albert et al.* because there is a network between the agents, managers and servers, employing Figure 2A as the best example of such a network.

In particular, the Examiner points out that packets travel into the system of *Albert et al.* from clients 201-203 through a first network 210 to the forwarding agent 231. Appellants do not disagree.

The Examiner next maintains that some of the packets can get forwarded to the service managers 241, 242 from the forwarding agent 231, while other packets may be forwarded to a plurality of servers 220-223. Appellants do not dispute that some packets may be forwarded from forwarding agent 231 to service managers 241, 242, while other packets may be forwarded from the forwarding agent to servers 221-223. What Appellants do dispute is any disclosure by *Albert et al.* that the forwarding of such packets from the forwarding agent to either the service managers or the servers is performed via a "**second network interface**."

Because there is no disclosure of such a "second network interface," *Albert et al.* cannot anticipate claims 1, 2, 4, 7, 16, 22-27, 29, 32, 40, and 46-49, the Examiner's speculation to the contrary notwithstanding. Clearly, *Albert et al.* discloses one network 210, and thus network interfaces connected thereto, between the clients 201-203 and the forwarding agents 231, 232. If *Albert et al.* intended the forwarding agents, service managers and/or servers to be in separate networks, or separated by networks, it stands to reason that *Albert et al.* would have shown other networks, similar to network 210, between these elements. The Examiner contends that the network 210 is depicted as a cloud as representative of well known connections of a series of routers, switches, ISPs, etc., and that no such network cloud is depicted "between the forwarding agents and the servers because the disclosure shows how these elements are actually connected." However, Fig. 2A of *Albert et al.*, upon which the Examiner relies, merely depicts lines between the forwarding agents and the service managers and between the forwarding agents and the servers. Contrary to the Examiner's allegations, no routers, switches, etc. are disclosed between the forwarding agents and the service managers and/or servers to depict an "actual" network between these elements.

The Examiner may speculate as to network connections and network interfaces between the forwarding agents and the service managers and/or servers and may even speculate that such network interfaces could be connected therebetween, but the rejection of claims 1, 2, 4, 7, 16, 22-27, 29, 32, 40, and 46-49 is under 35 U.S.C § 102(e) and mere speculation or possibilities of what could be are not sufficient grounds on which to sustain a rejection based on 35 U.S.C § 102(e).

Further, at page 15 of the Answer, the Examiner cites col. 6, lines 30-35, of *Albert et al.* as evidence that the server 222 may communicate with network 210 through either of the forwarding agents, that server 221 may communicate with network 210 exclusively through

forwarding agent 231, and that server 223 may communicate with network 210 exclusively through forwarding agent 232. Appellants have no dispute with this observation.

Appellants also do not dispute the Examiner's conclusion, from this disclosure, that this "shows that the connection between the servers and the forwarding agents is not part of network 210, but a separate entity where the communication must go through the agents, and messages cannot travel around the agents into the servers" (Answer-pages 15-16). The forwarding agents and the servers are not part of network 210; this much is depicted in Fig. 2A. However, merely because the forwarding agents, the service managers and the servers are not part of network 210 does not, in any way, reasonably lead to a conclusion that the forwarding agents are separated from the service managers and/or the servers by another, separate, network. *Albert et al.* does not explicitly disclose, as the Examiner speculates, that they are within separate networks. Accordingly, one cannot say, with certainty, or even with reasonable certitude, that *Albert et al.* discloses a network separating the forwarding agents from either the service managers or the servers. Therefore, there can be no "second network interface" disclosed therein.

At page 16 of the Answer, the Examiner contends that since the servers are not part of the forwarding agents in *Albert et al.*, they must exist as "separate nodes in the networked system" and therefore, communication between these elements must be sent through a connection. However, the fact remains that there is no disclosure within *Albert et al.* teaching that these elements are separated by a "network." Accordingly, while there may be interfaces between these elements, they would not be "**network** interfaces." Thus, *Albert et al.* fails to disclose the claimed "second network interface" and therefore cannot anticipate the claimed subject matter under 35 U.S.C § 102(e).

The Examiner also takes issue with Appellants' argument anent *Albert et al.* not teaching that the service manager actually "programs" the forwarding agent and a packet header filter. In particular, the Examiner contends that there is no definition of "program" within the instant disclosure and that the Examiner is merely applying the "ordinary meaning of programming" in analyzing the applied reference. Specifically, the Examiner contends that "programming" may be "any form of altering the way the forwarding agent and the packet header filter operates" (Answer-page 16). Therefore, the Examiner concludes, the fact that the service manager in *Albert et al.* updates wildcard affinities which are then employed in the forwarding agents to identify and filter packets sent to the proper destination, means that the service manager in *Albert et al.* "programs" the forwarding agents and the packet header filter. Appellants respectfully disagree.

As explained at col. 17, lines 48-54, of *Albert et al.*, "wildcard affinities specify sets of flows to be processed in a special way. Such processing is defined by associating actions with the affinities. Actions defined for the affinities specify the service to be performed by the forwarding agent on behalf of the Manager." Merely because certain services are performed by a forwarding agent on behalf of a service manager does not mean that the service manager "programs" the forwarding agent. But to whatever extent one may consider the service manager to "program" the forwarding agent in *Albert et al.*, the claims, e.g., claim 1, recite "a control interface through which said packet header filter and said forwarding table are programmed." Thus, not only the forwarding table (agent) is programmed, but also, the "packet header filter" is programmed. Moreover, the programming is performed through "a control interface," not through a service manager. Yet, if the Examiner is equating the service manager of *Albert et al.* to the claimed "control interface," then the service manager cannot be the claimed "external processor," as the

Examiner appears to assert, at page 3, bottom three lines of the Answer, where the Examiner cites portions of the reference relating to the service manager when applying the reference to the claimed feature of the "external processor." Since the claims require the "external processor" and the "control interface" to be separate components, the service manager of *Albert et al.* cannot serve as both of these claimed features. In the Examiner's response to this argument, at page 17 of the Answer, the Examiner explains that either service manager 241 or 242 is regarded as the claimed "external processor," while the "control interface" is an interface of the forwarding agent (231 or 232) which interfaces and receives messages from the service manager. However, claim 1, for example, recites, *inter alia*, "a control interface through which said packet header filter and said forwarding table are programmed." Thus, even if, *arguendo*, the forwarding agent is considered a forwarding table and that forwarding table is "programmed" through an interface by the service manager, assessments with which Appellants do not agree, there is still no programming of a "packet header filter" via the interface to the forwarding agent within *Albert et al.*

Accordingly, the Honorable Board is respectfully requested to reverse the Examiner's rejection of claims 1, 2, 4, 7, 16, 22-27, 29, 32, 40, and 46-49 under 35 U.S.C § 102(e) as the Examiner has failed to present a *prima facie* case of anticipation with regard to the subject matter of these claims. The Honorable Board is further respectfully requested to reverse the Examiner's rejection of claims 3, 5-14, 17-21, 28, 30, 31, 33-38, 41-45, and 50 under 35 U.S.C. §103 in view of the above discussion and for the reasons set forth in the principal Brief.

IV. CONCLUSION AND PRAYER FOR RELIEF

The claims positively recite at least a "second **network** interface" and "a control interface through which **said packet header filter and said forwarding table are programmed**"; but *Albert et al.* fails to disclose these features. The secondary references do not provide for the deficiencies of *Albert et al.* Appellants, therefore, respectfully request the Honorable Board to reverse each of the Examiner's rejections.

Respectfully Submitted,
DITTHAVONG MORI & STEINER, P.C.

January 28, 2009
Date

/Phouphanomketh Ditthavong/
Phouphanomketh Ditthavong
Attorney for Applicant(s)
Reg. No. 44658

Errol A. Krass
Attorney for Applicant(s)
Reg. No. 60090

918 Prince Street
Alexandria, VA 22314
Tel. 703-519-9952
Fax. 703-519-9958